

REMARKS/ARGUMENTS

In the restriction/election of species requirement dated May 23, 2007, the Examiner required a restriction to one of the following inventions from Groups I-III as set forth on page 2 of the Office Action (Election/Restriction), and the Examiner further required the election of a condition and a single compound accordingly Applicants elect the following:

Group I, Claims 1-4, 29-34 (Claims 13-16 are canceled) in the instant response

Condition: Multiple myeloma

Compound: 2-benzyl-5-(4-chlorophenyl)-6-[4-(methylthio)phenyl]-2H-pyridazin-3-one compound #4 of Claim 4

The claims of Groups I, II and III are integrally linked as compounds, method of making and method of use.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions that the claims of the restricted groups are patentably distinct.

Restriction between a product, method of making and the use thereof is proper if it can be shown that the product can be made by another method or that the claimed product has other utility besides that shown in the instant application. It is a technical relationship that defines the contribution which each of the Groups taken as a whole makes over the prior art.

In chemical cases a specified group of materials which also not necessarily belong to an otherwise class can be claimed together employing "Markush" language. The Markush practice sanctions the claiming together operable substances which could not be defined by generic language but which nevertheless have a community of chemical or physical characteristics. The members of the Markush group need only possess at least one property

in common which is mainly responsible for their function in the claimed relationship the same utility in a generic sense suffices.

Further, the MPEP at § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants submit that a search of all the claims would not constitute a serious burden on the Office.

The claimed composition differ from U.S. Pat. 6,348,468 B1 in the -N-A-R3 side chain. In the instant application A is a single bond when R³ is halogenated C₁₋₆ alkyl group.

Applicants request that if the elected invention is found allowable withdrawn Groups II and III which include all the limitations of the allowable claims be rejoined.

Applicants further request that should the species be found allowable, the Examiner expand the search to include non-elected inventions.

Divisional applications filed thereafter claiming the non-elected inventions should not be subject to double patenting ground of rejection. 35 U.S.C. § 121, In re Joyce (Cmr. Pat. 1957) U.S.P.Q. 412.

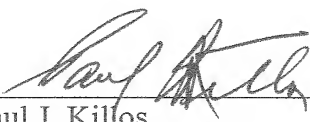
Applicants submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 06/04)



Paul J. Killos
Registration No. 58,014